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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,405	11/20/2003	Timothy L. Mason	MASON - 13	9734
25889	7590	07/01/2004	EXAMINER	
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			NOVOSAD, JENNIFER ELEANORE	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,405

Applicant(s)

MASON, TIMOTHY L.

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11-20-2003.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed February 20, 2004 contains a list of co-pending applications that applicant wishes to bring to the attention of the examiner. It is noted that these co-pending applications have been considered and reviewed. *However*, if applicant wishes that these co-pending applications be listed on any subsequent patents, it is recommended that applicant submit a PTO-1449 form with the applications listed thereon.

Claim Objections

Claim 8 is objected to because in line 10, it is suggested that --the-- be inserted before "support". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 4, 8, 10, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The (grammar of the) preamble in claim 1 renders the claim indefinite. *In particular*, it is unclear what structure, i.e., the shelf or the unit, has the flat base. *To correct this*, it appears that --, the shelf-- should be inserted after "base" in line 2.

In claims 3 and 10, section (b), the limitation recited therein renders the claim indefinite since the structural relationship between the elements is unclear, especially in view of the language of the recitation in section (b). *Further*, since "forward portions", as in section (c), have not been properly set forth, the structural relationship between the connector, the walls and the other claimed structure is unclear.

Claim 4 recites the limitation "said support floor" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. *To correct this*, it appears that "floor" should be deleted. *Further*, it is unclear from the drawings and specification (note the sentence bridging pages 9 and 10), *how* the retainer holds units placed below said shelf. It is suggested that perhaps this be shown in the drawings. This rejection is also applicable to claim 11.

Claim 8 recites the limitation "said first angle" in line 13. There is insufficient antecedent basis for this limitation in the claim. Further, in view of this lack of antecedent basis, the comparison between the second angle, i.e., the second angle greater than said first angle, and the first angle cannot be properly determined. Note claims 12 and 13 which also refer to the first angle.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,044,989 (Sosso '989).

Sosso '989 discloses a shelf (see Figure 4) comprising a plurality of adjacently-spaced walls (68) including first and second outer walls and at least one inner wall thereby defining at least two channels (between elements 68) between adjacent walls (68); the shelf further comprising a plurality of supports (46 or 50) disposed in the channel wherein the support has a rearward portion (extending across the upper left of Figure 4) elevated at a first angle, a substantially horizontal portion (extending across the lower right of Figure 4) and an intermediate portion (at 46, 50) connecting the rearward and forward portions and elevated at a second angle that is greater than the first angle; *with respect to the limitation "so that when the merchandise unit... to the forward portion of said support" in lines 12-14 of claim 1*, it is noted that this is a functional limitation and that the shelf of Sosso '989 is capable of performing this function when elements (such as 54) are used at appropriate locations on the rearward and forward portions of the shelf; *with respect to claim 2*, the support comprising at least two spaced apart members (at 52 is a first set and at 48, the other) connected to a portion (at 75) of the walls (68); a connector (54 at lower right front of Figure 4) connected to forward portions of the walls; and each of the walls (68) has a guide portion (75) extending inwardly toward the channel.

It is noted that the recitations (a) "for at least one modular merchandise unit" in lines 1-2 of claim 1, are functional recitations and that the structure shown by Sosso '989 is capable of performing all of these functions.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Sosso '989 as applied to claims 1-3 and 7 above, and further in view of U.S. Patent No. 4,662,523 (Stein *et al.* '523).

Sosso '989 discloses the shelf as advanced above.

The claim differs from Sosso '989 in requiring the underside of the support to have a retainer. It is noted that the recitation "for holding modular merchandise units placed below said shelf" in lines 2-3 of claim 4 is a mere functional limitation.

Stein *et al.* '523 teach a shelf comprising a rearward portion (30D), an intermediate portion (30C) and a forward portion (30A) whereby a retainer 32A) is on the underside of the support.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelf of Sosso '989 with a retainer, as taught by Stein *et al.* '523 for increased securement and stability of the shelf.

Claim 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sosso '989, alone.

Sosso '989 discloses the shelf as advanced above.

The claims differ from Sosso '989 in requiring the first and second angles to define an angle in a range (claim 5) and specific angles (claim 6).

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Although Sosso '523 does not disclose the angles specified in the claims, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have provided the shelf with the specified angles, as determined through routine experimentation and optimization, for ease in use of the shelf.

Claims 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sosso '989 in view of U.S. Patent No. 5,353,939 (Beeler *et al.* '939).

Sosso '989 discloses the shelf as advanced above.

The claims differ from Sosso '989 in requiring: (a) a housing having at least one open face (see section a of claim 8) whereby the shelf, or a plurality of shelves (claim 11) is/are supported therein (see section b of claim 8); and (b) the first and second angles to define an angle in a range (claim 12) and specific angles (claim 13).

With respect to (a), Beeler *et al.* '939 teach a display device comprising a housing (10 - see Figure 1) having an open face whereby a plurality of shelves are supported therein.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the shelf of Sosso '989, and a plurality thereof, in the device of Beeler *et al.* '939, for increased storage capability, capacity and organization.


With respect to (b), although Sosso '523 does not disclose the angles specified in the claims, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have provided the shelf with the specified angles, as determined through routine experimentation and optimization, for ease in use of the shelf.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Examiner
Art Unit 3634

Jennifer E. Novosad/jen
June 24, 2004